UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANDREW LAWRENCE, a single man,

Plaintiff,

v.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendant.

Case No. C4-5791FDB

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS FOR PARTIAL SUMMARY JUDGMENT ON AFFIRMATIVE DEFENSE NO. 4

Plaintiff Andrew Lawrence has filed suit against Defendant The Prudential Insurance Company of America ("Prudential"), claiming that Prudential wrongfully denied him long-term disability benefits under an ERISA governed policy ("the Plan"). Prudential has answered and alleged, among other things, that even if Mr. Lawrence were entitled to benefits under the Plan, any such benefits should be reduced by the amount of workers compensation payments received by Mr. Lawrence.[1]

Before the court is Mr. Lawrence's motion for partial summary judgment, seeking to strike Prudential's affirmative defense of offset, along with Prudential's opposition and cross-motion for

[1]The motions before the court address only whether the offset provision applies to Mr. Lawrence's workers' compensation benefits. The outright denial of Mr. Lawrence's disability claim remains in dispute and is not part of this Order.

partial summary judgment, seeking an order establishing that any benefits to which Mr. Lawrence may show himself entitled are subject to the offset of workers compensation payments. Prudential also claims that the appropriate standard of review is one of deference, rather than *de novo*, because the Plan vests the plan administrator with discretionary authority to determine benefits eligibility.

Thus, the central issues for the court to decide are (1) whether the Plan properly vests the plan administrator with discretionary authority establishing an abuse-of-discretion standard; and (2) whether payments received by Mr. Lawrence from the Washington Department of Labor and Industries should be offset as "deductible sources of income" as defined in the Plan.

To aid the court in resolution of these issues, it heard oral argument on October 14, 2005. The court has also considered the parties' motions, responses, affidavits in support, and the balance of the record. For the reasons articulated herein, Plaintiff's motion for partial summary judgment is GRANTED as to the standard of review and DENIED as to the affirmative defense. Conversely, Defendant's cross-motion for partial summary judgment is DENIED as to the standard of review and GRANTED as to its affirmative defense of offset.

I.

Factual Background

The facts relevant to the issues presently before the court are undisputed. Prudential funded a long-term disability Plan that was provided to employees of Aero Controls, Inc. The Plan provides disability benefits to employees who are "disabled" as defined by the Plan. Initially, the Plan requires an employee to be unable to perform the substantial and material duties of the employee's regular occupation and to have at least a 20% loss of indexed monthly earnings. After 24 months of payment, the definition of "disabled" changes under the Plan. At that time, "disability" is defined as the "inability to perform the duties of any gainful employment."

A participant's benefits are calculated as a certain percentage of their recent average wage. And, as the benefits are intended to replace an employee's income, the amount of the benefit is

reduced by certain "deductible sources of income." The applicable provision of the Plan provides for the following sources of income:

> The amount that you receive or are entitled to receive as loss of time benefits under:
>
> (a) a worker's compensation law;
>
> (b) an occupational disease law; or
>
> (c) any other act or law with similar intent
>
> * * *
>
> 3. The amount that you, your spouse and children receive or are entitled to receive as loss of time disability payment because of your disability under:
>
> (a) The United States Social Security Act;
>
> . . . or
>
> (e) any similar Plan or act.

While working for Aero Controls, Mr. Lawrence injured his back on July 9, 1999. Plaintiff applied for and was granted workers' compensation benefits from Washington's Department of Labor and Industries ("L&I"), in the amount of $1,666.00 per month. Mr. Lawrence also applied for disability benefits from the Social Security Administration ("SSA") and in June 2001, the SSA awarded him disability benefits at the rate of $799.00 per month, retroactive to February 2001.

Mr. Lawrence then applied for long-term disability benefits under the Plan. Those benefits were approved effective November 21, 2000 on the basis that Mr. Lawrence was unable to perform the duties of his regular occupation. Under the Plan, Mr. Lawrence's benefits from L&I and Social Security reduced or offset the amount of benefits he was eligible to receive.

L&I subsequently found Mr. Lawrence totally and permanently disabled effective May 16, 2003. At that time, L&I terminated Mr. Lawrence's "time loss compensation benefits" and placed him "on pension" effective May 16, 2003. This "pension" allows Mr. Lawrence to continue to

receive from L&I a monthly payment of a percentage of his last wages, to be paid for the rest of his life.

Under Washington law, injured workers who receive L&I pensions for permanent disability are given three choices: (1) continue to receive monthly payments at a certain percentage of their last wages (60-75 percent of their last wages earned, depending on the number of dependents), but with payments ending when the worker dies; (2) receive a lower monthly amount, but if the worker dies, his or her surviving spouse or other dependent would continue to receive the same amount for a period of time; and (3) receive a lower monthly amount, but if the worker dies, his or her surviving spouse or other dependent would receive half of the monthly benefit for a period of time. RCW 51.32.067. Plaintiff chose the second option. Prior to the change in Mr. Lawrence's L&I benefits, he had been entitled to receive monthly payments of at least 64% of his last earned wages. RCW 51.32.060, RCW 51.32.067(a).

After paying benefits under the Plan to Mr. Lawrence for 24 months, Prudential denied Mr. Lawrence's long-term disability claim outright because it determined that he was no longer "disabled" as that term is used in the Plan.

II.

Summary Judgment Standard

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Summary judgment is not proper if material factual issues exist for trial. Warren v. City of Carlsbad, 58 F.3d 439, 441 (9th Cir. 1995), *cert. denied*, 516 U.S. 1171 (1996).

If the moving party shows that there are no genuine issues of material fact, the non-moving party must go beyond the pleadings and designate facts which show a triable issue. Celotex Corp. v. Catrett, 477 U.S. 317, 322-323 (1986). Summary judgment is proper if the moving party shows that

there is no evidence which supports an essential element to the non-moving party's claim. Celotex, 477 U.S. 317 (1986). The substantive law governs whether a fact is material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

III.

Standard of Review

The Supreme Court has held that if an ERISA plan vests in the plan administrator the discretionary authority to determine a beneficiary's eligibility for benefits, reviewing courts should afford deference to the administrator's decision. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). Reviewing courts uphold these decisions unless the plan administrator has abused the discretion granted to it. *See, Bendixen v. Standard Ins. Co.*, 185 F.3d 939, 942 (9th Cir. 1999). Without such discretionary authority, courts shall assign meaning to the terms of a plan "in an ordinary and popular sense as would a [person] of average intelligence and experience. *Kearney v. Standard Ins. Co.*, 175 F.3d 1084, 1089 (9th Cir. 1999). Any ambiguities in the terms of the Plan must be construed against the insurer. *Pension Trust Fund for Operating Engineers v. Federal Ins. Co.*, 307 F.3d 944 (9th Cir. 2002).

Prudential claims that the Plan in effect when it terminated Mr. Lawrence's benefits granted it, as the plan administrator, discretionary authority. Prudential relies on the following provision of the Plan:

> This Group Contract underwritten by The Prudential Insurance Company of America provides insured benefits under the Employer's ERISA plan(s). The Prudential Insurance Company of America as Claims Administrator has the sole discretion to interpret the terms of the Group Contract, to make factual findings, and to determine eligibility for benefits. The decision of the Claims Administrator shall not be overturned unless arbitrary and capricious.

The language cited by Prudential is contained in the "Summary Plan Description," provided by Aero Controls, Inc., which purports to describe the plan and inform its employees of their rights under the Plan. On the page immediately preceding that containing the above-cited language, the

following language appears:

> The Summary Plan Description is not part of the Group Insurance Certificate. It has been provided by Your Employer and included in your Booklet-Certificate upon the Employer's request.

The language upon which Prudential relies does not appear in any part of the Plan other than the Summary Plan Description. Prudential refers the court, however, to the Plan's integration clause, which states that "the forms shown in the Table of Contents as of the Contract Date," are part of the Group Contract. The Table of Contents does include the Summary Plan. However, when one references the Summary Plan, included is the language specifically excluding it from the Group Insurance Certificate. Prudential argues that the Group Contract and the Group Certificate are not one and the same. While this may be technically correct, the court finds the route Prudential proposes is far too circuitous and confusing. Assuming the average purchase of insurance were able to follow the trail proposed by Prudential, it is unclear how that purchaser could be expected to distinguish between the Certificate and Contract; particularly with the inclusion of a page devoted entirely to excluding the Summary Plan. Therefore, the court finds the Plans's reservation of discretion to be too ambiguous to overcome the presumption of *de novo* review.

IV.

Offset Benefits

Mr. Lawrence claims that as a permanently and totally disabled individual according to L&I, he can no longer receive "time loss benefits," which are admittedly subject to offset by other sources of income under the Plan. He argues that as a claimant classified as permanently disabled, he receives a monthly "pension." RCW 51.32.060. He argues further that, because time loss compensation is separate from pension payments under the worker's compensation statutes, it stands to reason that the average and ordinary person would not construe the pension payments as constituting time loss payments. Mr. Lawrence also claims that, at best, the Plan language is

ambiguous and thus, the court must resolve any ambiguity regarding the terms "time loss benefits" or "time loss compensation" in his favor.[2]

The court does not agree that the terms "time loss benefits" or "time loss compensation" are ambiguous. Neither does the court agree that the "pension" payments awarded by L&I are the type of already earned deferred compensation typically suggested by traditional retirement benefits or as ordinarily understood by the average person. Rather, the finding of a "permanent and total disability" by L&I means that the worker has suffered a complete loss of earning power, such as an inability to perform reasonably obtainable work suitable to his existing qualifications and training. *See, Shea v. Dep't of Labor & Indus.*, 12 Wn.App. 410, 529 P.2d 1131 (1974).

The court's interpretation of the "pension" payments at issue is also consistent with Washington law. The only difference between temporary total disability and permanent total disability is the duration of the disability; in all other respects they are the same. *Kaiser Aluminum & Chemical Corp. v. Overdorf*, 57 Wash. App. 291, 296 n. 6, 788 Pl.2d 8 (1990) (*quoting Bonko v. Department of Labor & Indus.*, 2 Wash.App. 22, 466 P.2d 526 (1970). Once a claimant's disabling condition becomes fixed and static, the time loss payments cease and he is awarded a permanent disability award based on his inability to work "during the period of such disability." L&I refers to the benefit as a "non-statutory pension, " stating that it may not be payable if the claimant is able to return to work. *Workers' Guide to Industrial Insurance Benefits*, at 15. L&I further describes the "pension" benefits as benefits that are paid monthly and are "based on the amount of time-loss compensation to which you are entitled." *Id.* at 15.

The purpose of the "pension" is the same as the time loss payments – that is, to compensate for loss of earning power, but simply for a longer duration (the worker's expected working life), *See,*

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[2]The language of the Plan clearly allows offset of "disability payments because of your disability under The United States Social Security Act." Mr. Lawrence does not argue that the Social Security disability benefits he receives are excluded from offset.

Harrington v. Department of Labor & Indus., 9 Wn.2d 1, 7, 113 P.2d 518 (1941). The "pension" is calculated on the same basis as the "time loss" temporary benefits as a certain percentage of the worker's monthly wage paid on a monthly basis. RCW 51.32.060. And, the payments may be terminated if the worker is able to return to work. The court concludes that the "pension" represents permanent total disability benefits paid to compensate Mr. Lawrence for work time lost due to a disabling condition and, therefore, it is an amount received as loss of time benefits under a worker's compensation law.[3] Thus, any payment of benefits to Mr. Lawrence should be offset by the permanent total disability benefits from L&I that he receives or is entitled to receive.

ACCORDINGLY,

IT IS ORDERED:

(1) Plaintiff's motion for partial summary judgment (Dkt.#19) is **GRANTED** as to the standard of review and **DENIED** as to Defendant's affirmative defense No. 4; Defendant's cross-motion for partial summary judgment (Dkt.#23) is **DENIED** as to the standard of review and **GRANTED** as to Defendant's affirmative defense No. 4.

DATED this 18th day of October, 2005.

FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

[3]Prudential also contends and the court agrees, that adoption of Mr. Lawrence's definition would lead to the unacceptable result of two identically situated participants under the Plan, both with the same disability, being treated differently because one person's condition has been determined to be "fixed" while the other's has not. Thus, when the disability has not been "fixed," L&I payments are subject to the offset provision (a result with which Mr. Lawrence concurs), but once the disability is "fixed," they would no longer be subject to the offset provision. This same anomaly would occur in states other than Washington that do not refer to its benefits for a fixed disability as a "pension."